

**FEDERAL ELECTION COMMISSION NOMINATION
HEARING FOR JOHN J. SULLIVAN**

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WEDNESDAY, JUNE 10, 2009

United States Senate,
Committee on Rules and Administration,
Washington, D.C.

The committee met, pursuant to notice, at 2:45 p.m., in Room SR-301, Russell Senate Office Building, Hon. Charles E. Schumer, Chairman of the committee, presiding.

Present: Senators Schumer, Bennett, and Chambliss.

Staff Present: Jean Bordewich, Staff Director; Jason Abel, Chief Counsel; Veronica Gillespie, Elections Counsel; Adam Ambrogi, Counsel; Carole Blessington, Assistant to the Staff Director; Brenna Allen, Professional Staff; Lynden Armstrong, Chief Clerk; Matthew McGowan, Professional Staff; Mary Suit Jones, Republican Staff Director; Shaun Parkin, Republican Deputy Staff Director; Paul Vinovich, Republican Chief Counsel; and Michael Merrell, Republican Counsel.

OPENING STATEMENT OF CHAIRMAN SCHUMER

Chairman Schumer. The hearing will come to order. I want to thank Senator Bennett for being here and apologize for showing up late.

I would like to thank my friend, in addition to apologizing to him for being late, I want to thank him for his extraordinary efforts in being available this afternoon. Our schedules are busy. He has to leave at three, so we will try to make this a very quick hearing, which is in your interest, Mr. Sullivan, I think, and hopefully we will be completed quickly.

We are here to have a confirmation hearing for John J. Sullivan as a member of the Federal Election Commission. Welcome. It is nice to see you, and I know your family is in attendance and I would like to welcome them, if you can just say hello. Wave your hands. Maybe you can introduce them when you speak, Mr. Sullivan. It is always nice to see the families.

33 On May 4, 2009, Mr. Sullivan was nominated by President Obama to serve on the
34 FEC for a single term expiring April 30, 2013. If confirmed, Mr. Sullivan would replace
35 Commissioner Ellen Weintraub.

36 The Rules Committee oversees issues related to our democratic process, such as
37 Federal elections and campaign finance. So far this Congress, our hearings have focused
38 on election-related issues, such as our outdated voter registration system and the problems
39 faced by overseas voters. Today, we are going to shift gears and focus on the FEC, an
40 agency this committee had oversight over since its creation in 1975. Holding FEC
41 confirmation hearings is one of our most important tasks and I look forward to hearing
42 from our most recent nominee on how he will support the mission of the FEC and what he
43 sees as his greatest assets and challenges in this role.

44 I am going to ask that my entire statement be read into the record so that Senator
45 Bennett can get to the meeting he has to go to.

46

47 **[The prepared statement of Chairman Schumer included in the record:]**

48

49 **Chairman Schumer.** I welcome Mr. Sullivan and call on Senator Bennett for his
50 statement.

51

52 **OPENING STATEMENT OF SENATOR BENNETT**

53 **Senator Bennett.** Thank you very much, Mr. Chairman.

54 Mr. Sullivan and I have visited. I find him eminently well qualified for this
55 position. The old line in business, is once you have made the sale, get out of the room, so
56 I shall not go any farther with this or delay this any further.

57 Welcome, Mr. Sullivan, and congratulations on your nomination.

58 **Chairman Schumer.** Senator Chambliss, would you like to make any statement?

59

60 **OPENING STATEMENT OF SENATOR CHAMBLISS**

61 **Senator Chambliss.** I want to echo what Senator Bennett just said. I was to
62 meet with Mr. Sullivan a couple of weeks ago and it didn't work out and I had to call him up
63 and apologize for canceling the meeting, but I wanted to come look him in the face today to
64 tell him we intend to support his nomination, and thanks for holding the hearing on him,

65 Mr. Chairman.

66 **Chairman Schumer.** Thank you.

67 I want to ask the nominee to stand and raise your right hand.

68 Do you swear that the testimony you are about to provide is the truth, the whole
69 truth, and nothing but the truth, so help you God?

70 **Mr. Sullivan.** I do.

71 **Chairman Schumer.** Please be seated.

72 You may make your opening statement, and if you would like, introduce your
73 family.

74

75 **TESTIMONY OF JOHN J. SULLIVAN, NOMINEE TO BE**
76 **COMMISSIONER, FEDERAL ELECTION COMMISSION**

77 **Mr. Sullivan.** Thank you, Chairman Schumer, Ranking Member Bennett, and
78 distinguished members of the Senate Committee on Rules and Administration. I am
79 honored to come before you this afternoon as President Obama's nominee to the Federal
80 Election Commission.

81 Before I talk about the FEC, let me tell you a little bit about myself. I am the oldest
82 of four children of John and Estelle Sullivan. My parents were born, grew up, and started
83 a family in the tenements of East Harlem in New York City. My father left school at the
84 age of 17 to serve his country in World War II, and when he returned from the Navy, he got
85 a job as an elevator operator and then as a bank guard at the Morgan Guarantee Trust
86 Company, where he spent the rest of his working life.

87 My mother, after graduating from high school, joined her older sister working at a
88 factory in Manhattan. When the factory closed, she worked at a variety of jobs, including
89 as a toll taker at the Verrazano Narrows Bridge and as a medical transporter at a local
90 hospital.

91 With my parents' hard work as an example, I worked my way through Catholic high
92 school and then through college. I am fortunate to have been the first member of my
93 family to have had the opportunity to attend college. I earned my degree at the University
94 of Massachusetts in Boston, graduating Summa Cum Laude, while working as a school bus
95 driver in the Boston Public Schools. I then earned my law degree at the Northeast
96 University School of Law in Boston.

97 There is a commitment to hard work and public service that runs deep in my family.
98 My wife, who is here today, Sandra Levik, is a public defender in the District of Columbia.
99 My son, who is also with me, works as a staff investigator at the Public Defender's Office
100 in New Orleans. My daughter Sarah, who is here, is a college student. My other family
101 members, some of who are also present here today, my sisters, including my sister Diane,
102 her daughter, and my wife's sister, are nurses working in hospitals throughout New York
103 and on a Navajo Reservation in Arizona. My brother Charlie, who is here today, is a
104 retired New York City Police Officer. And my sister Diane's son is currently a New York
105 City Firefighter.

106 I am presently an Associate General Counsel at SEIU, where I am responsible for
107 advising the union's political programs and its election reform and election protection
108 efforts. I have spent most of my professional life working as an election lawyer. I have
109 served as an advocate, fighting to protect the rights of my fellow Americans to register to
110 vote and to freely cast their ballots in elections throughout this country, making sure that
111 their votes are fairly and accurately counted.

112 I have also acted as a neutral official and observer in numerous elections both here
113 and abroad. For example, I was part of an international team of observers who monitored
114 the presidential and parliamentary elections in Ukraine in what is now known as the
115 Orange Revolution. I currently serve as Vice President of the bipartisan Montgomery
116 County, Maryland, Board of Elections, which is responsible for ensuring fair elections for
117 over half-a-million registered voters.

118 The casting of ballots on election day is only the last step in the process in which a
119 free people elect their leaders. The public campaigns by candidates, citizens, independent
120 groups, and parties in the weeks and months before election day is one of the great features
121 of our democracy. It is during this time that candidates and citizens speak out on the
122 important issues of the day and thereby participate in setting the goals and selecting the
123 leaders of our country.

124 Just as the process of voting must be conducted in a fair, open, and impartial way to
125 ensure the legitimacy of the system, so, too, must the period of campaigning be governed
126 by a set of rules clearly articulated and fairly enforced. It is this latter task, regulation of
127 the raising and spending of money in Federal election campaigns, that falls on the FEC.

128 As an election lawyer, I work to encourage Americans to participate in the election

129 process. I know only too well the corrosive effect that cynicism can have on the
130 willingness of citizens to take the time out of a day already crowded with the obligations of
131 work and family to participate in election campaigns and to vote. Nothing can feed that
132 cynicism more than the idea that the system is corrupt, that money counts more than votes,
133 and that the voices of ordinary Americans are being ignored by candidates and elected
134 officials in the debate over important issues.

135 It is the elimination of corruption, and arguably as important, the elimination of the
136 appearance of corruption which serves as the foundation of our campaign finance laws. In
137 this way, the FEC has an important responsibility of combating that cynicism by fairly
138 enforcing these laws.

139 By statute, the FEC acts only upon the affirmative vote of four of its six members,
140 no more than three of whom can be from any one political party. This six-member
141 structure gives the agency a great advantage. All of its decisions must be the product of a
142 bipartisan consensus and none can fairly be viewed as the work of one political party taking
143 advantage over another.

144 Throughout its history, the Commission has been able to work through differences
145 to resolve the bulk of the enforcement cases and difficult legal issues involving the proper
146 application of the campaign finance laws. The goal of our campaign finance laws is the
147 elimination of corruption and of the appearance of corruption in our political process in
148 order to ensure free and fair elections. These are my values and I am confident that they
149 are shared by the members of the FEC.

150 There may be disagreements among the Commissioners on how best to apply the
151 law. However, as in the past, there remains ample room for the ordinary course of
152 enforcement and for the resolution of difficult issues by the Commission. I would hope
153 that the FEC's Commissioners would build and maintain an effective dialogue and improve
154 their capacity to work out differences constructively. And in all matters that come before
155 the FEC, Commissioners must strive to be clear in their reasoning, impartial in their
156 decisions, and transparent in the process of enforcing the law.

157 Should I be confirmed, it would be my great honor to serve on the Commission.
158 Thank you for the opportunity to appear before you today and I would now be happy to
159 take any questions.

160 **[The prepared statement of Mr. Sullivan included in the record]**

161 **Chairman Schumer.** Thank you very much, Mr. Sullivan.

162 First, I am glad to see--and would note that this is not a commentary on you, but I
163 am glad to see that most of your family had the good sense to remain in New York--

164 [Laughter.]

165 **Chairman Schumer.** --and serve our city and our State. I also understand your
166 comments and the three-to-three deadlocks are an issue that we will look at, but I agree
167 with you, having a bipartisan vote on anything is important.

168 Anyway, let me ask you a few questions and then I will turn it over to my
169 colleagues.

170 First, I want to spend time talking about your career and how you believe that you
171 have been equipped to serve on the SEC. Tell me what experience you think has helped
172 you the most as you prepare to take on this challenge.

173 **Mr. Sullivan.** Senator Schumer, I think the best experiences that I have had as an
174 election lawyer is working with voters and members of our union, engaging them in
175 political campaigns and getting them involved in the process. I think having an open
176 process in which people feel free to participate and in which people feel that their voices
177 are being heard in the process has been one of the most rewarding experiences that I have
178 had. It is this value of both openness of the process and the willingness and desire of
179 people to participate in the election of their leaders which I find the most important
180 experience I have had and the value that I hold.

181 **Chairman Schumer.** Very good. Over the last four cycles, you have been
182 involved in election protection programs, ensuring a smooth election day. Can you tell us
183 a little about this experience and how it might affect you as Commissioner on the FEC?

184 **Mr. Sullivan.** First and foremost, I think it has left me with a tremendous respect
185 for the role of elections in our democratic process. Elections and the campaigns that lead
186 up to them are the mechanism by which not only do we choose our leaders, but we set our
187 agenda.

188 The work I have done to ensure that each eligible voter has the right to participate,
189 to cast a ballot, to ensure that those ballots are fairly and accurately counted, has been a
190 large part of my work over the last two cycles. I have worked as a poll watcher in polling
191 places. I have been nominated by the Governor of Maryland to serve as a county election
192 official. I have served on a transition committee established by the Governor seeking

193 input on appropriate reforms for the election process in our State of Maryland, and I have
194 worked with advocacy groups around the country on common goals of making sure that the
195 voter registration process is an effective and meaningful process and not a trap or a barrier
196 that would keep eligible voters away from the polls or deny them the opportunity to vote.
197 And then make sure that the election process itself is open, transparent, and free for those to
198 participate.

199 **Chairman Schumer.** Thank you. My time has expired. I have a second round,
200 but I want to turn to Ranking Member Bennett because I know that he has to get going
201 before that.

202 I just want to thank our other Commissioners for coming, Commissioners McGahn,
203 Bauerly, Hunter, Petersen, and Walther. Thank you for all being here. Commissioner
204 Weintraub is out of the country or I know she would have been here, as well.

205 Ranking Member Bennett?

206 **Senator Bennett.** Thank you very much, Mr. Chairman.

207 Mr. Sullivan, there has been a good deal of newspaper comment both about you and
208 your union, and I am going to give you the opportunity to use this platform to address some
209 of that comment. First, there were a couple of articles in Roll Call last year about SEIU
210 and the amount of money raised and spent. If I can quote one of them, it says, "SEIU
211 plans to spend a significant chunk of its nearly \$100 million political budget to help Harry
212 Reid get a filibuster-proof Senate." The second article says, "SEIU has vowed to spend
213 about \$75 million to influence Congressional races and has opened the spigot with a
214 \$600,000 TV ad buy targeting John Sununu and a \$500,000 ad buy going after Senator
215 Gordon Smith." Congratulations. You succeeded in both of those.

216 Now, \$100 million, is that number about right? And can you tell us how the union
217 spent that money in a way that was consistent with the current law?

218 **Mr. Sullivan.** You are right, Senator. SEIU is very active politically. Its
219 members are very active politically. The overwhelming majority of that money comes
220 from the voluntary contributions of SEIU members, working people who make--

221 **Senator Bennett.** Excuse me. By voluntary contributions, you mean something
222 over and above dues?

223 **Mr. Sullivan.** Yes, sir. Yes. People who agree to contribute a portion of their
224 pay every week to fund that political program, and that money is used for political

225 purposes. It is fully reported. It is fully disclosed on FEC reports that are filed.

226 In addition, the union engages in public education campaigns on issues of
227 importance, for instance, health care. Very much of that budget has gone to advocating
228 and educating the public on the issue of health care. These expenses are incurred in
229 election years and non-election years and--

230 **Senator Bennett.** Let me interrupt you now. Is there a difference between soft
231 money and hard money here?

232 **Mr. Sullivan.** Yes. In terms of the issue advocacy, that is what would be
233 characterized as soft money for the most part--

234 **Senator Bennett.** And some of the soft money comes out of the dues?

235 **Mr. Sullivan.** Yes. Yes. The source of soft money is dues. The source of hard
236 money is the voluntary check-off contributions that members make from their paycheck.

237 **Senator Bennett.** Okay.

238 **Mr. Sullivan.** With regard--sorry.

239 **Senator Bennett.** Thank you. I would like to get that clarification out for people
240 who are suggesting that what you did may have been somewhat subversive and improper.
241 I may not like it as a Republican, but that is the way the laws are structured now and you
242 acted entirely in accordance with the law. I am assuming that was your responsibility, to
243 make sure that you acted in accordance with the law?

244 **Mr. Sullivan.** That is one of my responsibilities, both to educate and train staff
245 people and officers about what kinds of funds can be used for what kinds of activities, what
246 kinds of reports or disclosures have to be filed, and to make sure that that actually takes
247 place, is part of my responsibility.

248 **Senator Bennett.** If we didn't have the current laws, would the money be donated
249 to political parties rather than used in that fashion?

250 **Mr. Sullivan.** Well, the union does contribute a lot to political parties, but it sees
251 the value of having an independent political voice on issues of concern that may transcend
252 particular candidates or even particular parties. We are often critical of Democrats as well
253 as Republicans on specific issues, and our members expect that the union will have that
254 independent political voice to argue for issues in their interest.

255 **Senator Bennett.** I see. The only reason I raise that last question, there is a
256 Harvard study that says one of the reasons voter turnout has gone down is because of the

257 dwindling influence of political parties. I think our present campaign laws are to the
258 disadvantage of political parties. I am not criticizing you in any way for what you are
259 doing, but I would like to see more of the money channeled through the parties rather than
260 in the other fashion.

261 Now, I would like to give you an opportunity to respond to those who have
262 criticized you in print or letter directly. Gerald Hebert, Executive Director of the
263 Campaign Legal Center, a group that favors regulation of political speech, has said that
264 your nomination is a cause for concern and he writes, "The gusto with which Mr. Sullivan
265 has bashed important elements of McCain-Feingold and repeatedly taken radical
266 deregulatory positions does not inspire confidence that he will have different views if
267 confirmed to the Commission." Do you consider yourself radical?

268 **Mr. Sullivan.** No, I don't, sir.

269 **Senator Bennett.** Do you wish to respond generally?

270 **Mr. Sullivan.** Yes. Thank you for the opportunity to respond. Most of that
271 criticism focused on comments that I participated in that were filed with the FEC in the
272 wake of the Supreme Court's decision in Wisconsin Right to Life. The issue before the
273 Court was the application of the FEC's electioneering communications rules to a particular
274 communication.

275 I think any fair observer reading Chief Justice Roberts' opinion in that case would
276 recognize it was written in very broad terms, using very broad language. And when the
277 FEC was confronted with having to write new rules to conform with that decision, it was
278 confronted with two options. One was, should we simply do it narrowly to find an
279 exception to the funding prohibition for electioneering communications, or should we
280 essentially redefine electioneering communications and exempt all of these electioneering
281 communications that fall outside of the scope that we can regulate from reporting and
282 disclosure requirements?

283 The unions filed comments with the FEC, which I joined, arguing for the second
284 alternative. In that capacity, I was acting in the best interest of my client and in my client's
285 historic concern that electioneering communications had the potential for interfering with
286 its legitimate grassroots lobbying activities.

287 My personal views, with respect to the issue of whether or not it is appropriate to
288 have reporting and disclosure of who pays for these ads is that I believe that is appropriate.

289 I believe that there is no constitutional prohibition against it, and that is how the FEC
290 ultimately ruled in that case. They said, well, the unions can fund these kinds of ads,
291 along with corporations, for that matter, but they are still required to file a report with us
292 and tell us how it was paid for. And I recognize that is what the FEC did.

293 As a legal matter, I believe that was an appropriate response to the Supreme Court's
294 decision, and if confirmed by the Senate, I will enforce that rule as articulated by the FEC.
295 However, I have to give the additional disclaimer that it is that precise issue which is
296 currently pending before the Supreme Court in the Citizens United case.

297 Now, after the union's position was rejected by the FEC, we didn't seek to challenge
298 it. The union did not challenge that. In fact, the union did not join the parties in the
299 Citizens United case to try to challenge that, as well. SEIU, my client, determined, fine,
300 this is the FEC's interpretation, we can live with that. We will file our reports. We will
301 put our disclaimers on the ads. And that is the current state of the law, and if confirmed,
302 that is the law I will enforce.

303 **Senator Bennett.** Thank you. I appreciate that, Mr. Chairman.

304 **Chairman Schumer.** Well, thank you, and I had a few other questions, but I will
305 submit them in writing, if you don't mind.

306 And now our hearing is adjourned. I thank the witness for being here.

307 **[Whereupon, at 3:04 p.m., the committee was adjourned.]**